

Item # _____

Prepared by: Josh Whitehead

Approved by: Danny Presley

**A JOINT ORDINANCE AMENDING THE MEMPHIS AND SHELBY COUNTY
UNIFIED DEVELOPMENT CODE AS ADOPTED BY THE CITY OF MEMPHIS
ON AUGUST 10, 2010, AND BY SHELBY COUNTY ON AUGUST 9, 2010, TO REVISE
AND ENHANCE THE JOINT ZONING AND SUBDIVISION REGULATIONS
BY AMENDING REGULATIONS ADDRESSING APPLICATIONS PENDING DURING
AMENDMENTS TO THE CODE, VAPOR SHOPS, EQUESTRIAN CENTERS, HOTEL AND
MOTEL WAIVERS, ACCESSORY STRUCTURES BUILT IN CLOSE PROXIMITY TO LOT
LINES, DRIVEWAY LOCATIONS ON LOTS OF LESS THAN 50 FEET IN WIDTH, FEATHER
SIGNS, APPEALS OF DECISIONS BY THE PLANNING DIRECTOR, CLARIFICATION OF
THE THREE TYPES OF STREET CLOSURES, STANDARD OF REVIEW FOR APPEALS
HEARD BY THE LEGISLATIVE BODIES, DEFINITIONS AND OTHER PROVISIONS OF THE
CODE; BEING CASE NO. ZTA 16-001. SPONSORED BY COMMISSIONER EDDIE JONES.**

WHEREAS, The Board of County Commissioners and Memphis City Council concur that the Office of Planning & Development should, from its experience in administering the Unified Development Code, periodically suggest amendments to the same to make it a more practical code benefiting the needs of the public; and

WHEREAS, a comprehensive review of the Unified Development Code was initiated by the Memphis and Shelby County Office of Planning and Development; and

WHEREAS, The Unified Development Code should reflect the adoption of several amendments presented by the Memphis and Shelby County Office of Planning and Development; and

WHEREAS, The Memphis and Shelby County Land Use Control Board approved these amendments at its September 8, 2016, session;

NOW, THEREFORE, BE IT ORDAINED, By the City Council of the City of Memphis and by the Board of Commissioners of Shelby County, Tennessee that Joint Ordinance No. 5367, is hereby amended as follows:

SECTION 1, CASE NO. ZTA 16-001. That various sections of the Unified Development Code be hereby amended as reflected below. Additions are indicated in bold, underline; deletions are indicated in strikethrough:

Insert new Section 1.13.3E:

Applications Pending During Text Amendments

1. Vested Rights. Text amendments to this development code shall apply to any application that is complete and pending at the time the text amendment(s) receive final approval from the governing bodies, provided the application has not resulted in the issuance of a building permit or the approval of a subdivision plan or any other site plan that was granted in accordance with the provisions of this Code. This Paragraph shall not be interpreted to conflict with TCA 13-4-310.

2. Pending Legislation. Any individual, board or body with authority to act upon the regulations of this Code shall consider pending text amendments to this Code, provided the pending text amendment(s) have been acted upon by the Land Use Control Board and by one or both governing bodies at second reading (see Chapter 9.4, Text Amendment).

Amend Section 2.5.2C:

~~Conditional Use Permit~~— Significant Neighborhood Structures
Conditional Use Permit

Amend Section 2.5.2 (Use Table):

~~Conditional Use Permit~~— Significant Neighborhood Structure **Conditional Use Permit**

Amend Section 2.5.2 (Use Table):

(insert new use entitled “Riding Academy and Equestrian Center with Outdoor Lighting” and permit by Special Use Permit (indicated by the symbol “□”) in the P and CA zoning districts and by right (indicated by the symbol “■”) in the CMU-3, EMP and IH zoning districts; also, insert a reference to Section 2.6.3E)

Amend Section 2.5.2 (Use Table):

(insert new use entitled “Vapor Shop” and permit by Special Use Permit (indicated by the symbol “□”) in the CMU-1, CMU-2 and CMU-3 zoning

districts and by right (indicated by the symbol “■”) in the EMP and IH zoning districts; also, insert a reference to Section 2.6.3S)

Delete Section 2.6.2D(1) in its entirety.

Delete Section 2.6.2D(8) in its entirety.

Amend Section 2.6.2F:

...special **use** permit...

Amend Section 2.6.3A(1)(d):

A boundary of a residential zoning district, **open zoning district** or historic overlay district;

Amend Section 2.6.3D(1):

Any change in the controlling interest of **an hourly rate** hotel or motel, or the real property associated with such use, shall require the approval of a new special use permit (see Chapter 9.6).

Amend Section 2.6.3D(2):

The owner or manager of any **hourly rate** hotel or motel shall notify the Planning Director in writing of any change in name of the hotel or motel, not resulting in a change of ownership and shall apply for a new certificate of occupancy permit that reflects this change.

Amend Section 2.6.3J(1)(f):

...governing body~~(s)~~...

Insert new Section 2.6.3S:

Vapor Shops:

Vapor shops that exist in non-industrial zoning districts at the time this zoning text amendment becomes effective ([insert date here]) shall not be considered nonconforming uses and may be expanded, modified or relocated within the same site.

Amend Section 2.6.4D(2)(t):

...legislative **body** bodies...

Amend Section 2.6.4H:

Definition. A container building is any principal structure used for a purpose other a dwelling unit that is wholly or partially located within a shipping container. Container buildings are prohibited in all zoning districts except as indicated in Section 2.5.2. **Uses within a container building are regulated by Section 2.5.2. Only those uses permitted by right in a particular zoning district may be located within a container building with the approval of a Conditional Use Permit. Uses requiring the issuance of a Special Use Permit proposed within a Container Building may be approved through the Special Use Permit process without necessitating an accompanying Conditional Use Permit application.**

Amend Section 2.6.5A:

2.6.5A: See Sub-Section ~~2.6.5A~~ **2.8.2A**.

Amend Section 2.7.2A(2):

No accessory structure shall extend into the required front **or side (street)** yards, except as provided in Sub-Section 3.2.9E, Encroachments.

Delete Section 2.7.2A(5) in its entirety.

Amend Section 2.7.5B by re-designating it Section 2.7.2B(1):

In Relation to the Principal Structure. Except as provided in Sub-Sections [2.6.2H](#), [2.6.2I](#), 3.2.6A and Section 2.7.9, the height of an accessory structure shall not exceed the height of the principal structure.

Insert a new Section 2.7.2B(2):

Height and Setback. Accessory structures shall be at least five feet from the side and rear property lines. Any portion of an accessory structure over 20 feet in height shall be located at least 20 feet from all side and rear property lines that do not abut an alley. For the purpose of this Paragraph, height shall be measured from the highest point of the accessory structure, not including any exceptions articulated in Paragraph 2.7.2B(1).

Amend Section 2.7.10:

Boats, Trucks, Heavy Equipment, Recreation Vehicles and Trailers in Residential **and Open** Districts

Amend Section 2.7.10B:

The parking of trucks, heavy equipment or tractor trailers shall not be allowed. This requirement shall not prohibit commercial vehicles from making deliveries in a residential or open district...

Amend Section 2.9.2A:

(insert "Leasing/Management Office" in the column entitled "Accessory Uses")

Amend Section 2.9.3H:

(insert "and day reporting service establishment" to "Work release center" in the column entitled "Principal Uses")

Amend Section 3.6.1B(3):

Where the provisions of this Sub-Section cannot be met, the Board of Adjustment may grant a variance to in these requirements after receiving a written opinion from the Health Department that the proposed variance would not create a health hazard and the proposed lots are acceptable for septic tank and/or wells.

Amend Section 3.9.2E:

...Where the calculation of a range of setbacks is not practicable, such as instances where the subject lot(s) is on or within two lots of a corner, the structure shall be located a minimum of 20 feet from the front property line.

Amend Section 3.10.2F(1)(b):

...A campus master plan shall be submitted to the Office ~~Division~~ of Planning and Development prior to any zoning map change submittal...

Insert new Section 3.10.2F(4):

Applicability

This Sub-Section shall not apply to properties zoned CMP-1 and CMP-2 at the time this Code became effective on January 1, 2011.

Amend Section 4.4.4B:

At the street right-of-way, residential driveways must be spaced at least 20 feet from any other driveway on the same lot, but not nearer than 3½ feet

to any side lot line. **The 3½-foot separation shall not apply to driveways on lots of 50 feet in width or less...**

Amend Section 4.6.5D(3):

(replace the graphic to reflect the number of trees and fence type that is described in the table in Section 4.6.5C)

Amend Section 4.7.3A(1)(c):

...special **use** permit...

Amend Section 4.7.3C:

...special **use** permit...

Amend Section 4.9.2D(8):

...Feather signs shall not be considered flags and shall be regulated by Section 4.9.9.

Amend Section 4.9.6C:

No sign greater than six square feet in area shall be erected in a Nonresidential District or in the non-residential portion of an approved planned development closer than ten (10) feet to any lot line, except as provided in this Article **(see Paragraph 4.9.7C(3) and Sub-Item 4.9.7D(3)(b)(2) for provisions that allow for a 0-foot setback)**. No sign shall extend into any right-of-way except projecting signs where a building is located within six feet of the right-of-way.

Delete Section 4.9.6F(3) in its entirety.

~~No sign or sign structure obstructing an area between two feet and six feet above grade shall be located within ten (10) feet of the public right of way.~~

Amend Section 4.9.7D(1):

...Roof signs are permitted, provided the height restrictions of the zoning district are met.

Amend Section 4.9.7D(4)(a):

Attached:

1. **Standalone Buildings: For establishments that occupy an entire building, five signs per establishment and no more than two of the five may be located on any building façade, awning, canopy or marquee. Only one changeable copy sign shall be allowed. If a single owner or tenant occupies a building of more than 200,000 square feet in an Industrial District four additional signs, not on a canopy, awning, or marquee, are allowed.**
2. **Shopping Centers: For establishments within a structure that houses multiple businesses, such as a shopping center, one sign per establishment may be located on any building façade, awning, canopy or marquee, per building façade. An additional three signs may be located on fuel pump canopies for establishments within shopping centers that sell gasoline.**
3. **Office Buildings: For establishments within a multi-storied structure, such as an office building, one sign per ground floor establishment may be located on any building facade, awning, canopy or marquee, per building façade, provided the sign(s) is located along the outside of the area of the building that houses the establishment. In addition, one rooftop sign, per building façade, may be permitted to advertise an establishment located anywhere within the building.**

Insert new Section 4.9.14A:

Setbacks

The tables, charts and maps in this Section contain regulations related to the area and height of permitted signs. Please refer to Sections 4.9.7 and 4.9.8 for setbacks of permitted signs.

Insert new section lettering for Sections 4.9.14B, C, D, E and F.

Insert new Section 5.2.18A:

Generally

Public streets must be connected to the public street system with at least one unobstructed access point. Any proposal that would involve completely dislocating a street or street segment from the public street system through the erection of a gate(s) or other obstruction(s) shall necessitate a private street conversion (see Sub-Section 9.8A). Private streets are maintained by a homeowners association or one or more abutting property owner(s). A proposal involving the erection of a gate(s) or other obstruction(s) that results in at least one unobstructed access point to the public street system may be processed as a physical closure (see Sub-Section 9.8B).

Amend Section 5.2.18B(1), which is currently Section 5.2.18A(1):

...legislative body~~(s)~~...

Amend Section 5.2.18B(2), which is currently 5.2.18A(2):

...legislative body~~(s)~~...

Amend Section 6.5.1:

...special **use** permit...

Amend Section 6.5.1A:

...special **use** permit...

Amend Section 6.5.1C:

...special **use** permit...

Amend Section 6.5.1D:

...special **use** permit...

Amend Section 6.5.1F:

...special **use** permit...

Delete Section 7.2.9N in its entirety.

Amend Section 7.3.11:

Any use not explicitly listed in the Zoning Matrix below is prohibited within the Uptown Special Purpose District. Furthermore, no Planned Developments (Section 4.10) shall be allowed within the Uptown Special Purpose District.

Amend Section 7.3.11:

(insert new use entitled "Container Home" as a use permitted by Conditional Use Permit (indicated by the symbol "C") in the MDR, HDR, MU and UH zoning districts)

Amend Section 7.3.11:

(insert new use entitled “Container Building” as a use permitted by Conditional Use Permit (indicated by the symbol “C”) in the MU and UH zoning districts)

Amend Section 7.3.11:

(insert new use category “Agricultural” and a new use in that category entitled “Neighborhood Garden” as a use permitted by right (indicated by the “X” symbol) in the MDR, HDR, MU, UH and ULI zoning districts)

Insert new Section 8.1E:

The Use Standards of Chapter 2.6 shall apply to all uses contained in this Article, unless otherwise provided in this Article. See Use Table, Chapter 2.5, for required use standards.

Amend Section 8.3.11:

(insert new use entitled “Container Home” as a use permitted by Conditional Use Permit (indicated by the symbol “C”) in the R6, RU-1, RU-3, CMU-1, CMU-2 and CMP-2 zoning districts)

Amend Section 8.3.11:

(insert new use entitled “Container Building” as a use permitted by Conditional Use Permit (indicated by the symbol “C”) in the CMU-1 and CMU-2 zoning districts)

Amend Section 8.3.11:

(insert new use entitled “Neighborhood Garden” as a use permitted by right (indicated by the “■” symbol) in the R6, RU-1, RU-3, CMU-1, CMU-2 and CMP-2 zoning districts)

Amend Section 8.3.11 by inserting a new footnote “1:”

Planned Developments approved prior to the adoption of the University District Overlay (July 22, 2009) are not affected.

Amend Section 8.4.7:

(insert a new zoning district, CMP-1 and permit all uses permitted by right (indicated by the “■” symbol), by Conditional Use Permit (indicated by the

symbol “C”) and by Special Use Permit (indicated by the “□” symbol) consistent with the Use Table in Section 2.5.2)

Amend Section 8.4.7:

(insert new use entitled “Container Home” as a use permitted by Conditional Use Permit (indicated by the symbol “C”) in the R6, RU-1, RU-2, RU-3, RU-4, RU-5, CMU-1, CMU-2, CMU-3 and CMP-1 zoning districts)

Amend Section 8.4.7:

(insert new use entitled “Container Building” as a use permitted by Conditional Use Permit (indicated by the symbol “C”) in the CMU-1, CMU-2, CMU-3 and EMP zoning districts)

Amend Section 8.4.7:

(insert new use entitled “Neighborhood Garden” as a use permitted by right (indicated by the “■” symbol) in the R6, RU-1, RU-2, RU-3, RU-4, RU-5, CMU-1, CMU-2, CMU-3, CMP-1 and EMP zoning districts)

Amend Section 8.5.2C:

...special use permits...

Amend Section 9.2.1:

~~Unless set forth below,~~ The City Council retains review and approval or appeal authority within the City limits of Memphis and the Board of Commissioners retains review and approval or appeal authority within unincorporated Shelby County.

Delete the tables in Section 9.2.1.

Amend Section 9.2.2:

(replace the symbol “A*” under the column “Board of Adjustment” in the rows entitled “Administrative Site Plan,” “Special District Administrative Review,” and “Administrative Decision” with the symbol “A**” with the following new footnote: **A** = Only those property owners within 1000 feet of the subject property, as measured from property line to property line, may appeal decisions of the Planning Director, Building Official or City or County Engineer.**)

Amend Section 9.3.3H:

Applications may be filed and reviewed concurrently, at the option of the applicant, **provided there is not a pending appeal filed by applicant on the subject site (see Paragraph 9.23.1D(1)).**

Amend Section 9.3.4A:

(insert three new rows under “Right-of-Way Vacation” entitled “Conversions,” “Physical Closures,” and “Abandonment.” For each, add a cross reference to Section 9.8, require a public hearing at Land Use Control Board (indicated by the symbol “PH”), require a public hearing upon appeal only at the governing bodies (indicated by the symbol “PH-AO”), required mailed notice (indicated by the symbol “M”), require notice to be sent to the subject property owners (indicated by the “■” symbol), require notice to be sent to the adjacent owners (indicated by the “■” symbol) and require notice to be sent to neighborhood associations (indicated by the “■” symbol). Also, require a sign posting for Conversions and Physical Closures (indicated by the symbol “SP”) and notice to be sent to owners within 500 feet for Physical Closures (indicated by the “■⁶” symbol)

Amend Section 9.3.4A by inserting a new footnote “6:”

The 500-foot radius shall be measured from the entire segment of the road affected by the closure rather than the area of right-of-way to be vacated. The segment of road affected shall be defined to mean that portion of public right-of-way that contains the proposed closure between the two nearest intersecting streets on either side of the closure.

Amend Section 9.5.12A:

...legislative body ~~or bodies~~...

Amend Section 9.6.1:

A special use permit is required for all special uses as set forth in Article 2, ~~unless a waiver is obtained under the terms of Section 9.6.6.~~

Delete Section 9.6.6 in its entirety and replace with the title “Reserved”

Amend Section 9.7.7F(1):

...Only those provisions found in Article 5, **Chapter 4.3** or Section 3.9.2 may be waived by the Land Use Control Board through the waiver process, unless a conflicting procedure is articulated.

Amend Section 9.8.4A:

Not less than 35 or more than 75 days after an application has been determined complete, the Land Use Control Board shall hold a public hearing and give notice in accordance with Section 9.3.4, Public Hearings and Notification. ~~For conversions and physical closures, mailed notice shall also be measured from the delivered to all property owners within a three hundred (300) foot radius of the street or alley closing.~~

Amend Section 9.22.6B(3):

...legislative **body** bodies...

Amend Section 9.23.1C(2):

Not less than 28 or more than 63 days after a notice of appeal is filed, the Board of Adjustment shall hold a public hearing and give notice in accordance with Section 9.3.4, Public Hearings and Notification. In the case of appeals to the Land Use Control Board, not less than 35 or more than 75 days after a notice of appeal is filed, the Land Use Control Board shall hold a public hearing and give notice in accordance with Section 9.3.4, Public Hearings and Notification. **For appeals taken by non-property owners, the Office of Planning and Development shall provide notice of the appeal to the property owner by mail and any other reasonable means available no less than 10 days prior to the date of the public hearing by the Board of Adjustment.**

Amend Section 9.23.1C(4):

The Board of Adjustment or Land Use Control Board may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a period not to exceed one month without the consent of the applicant. **For appeals taken by non-property owners, the Board of Adjustment may only defer a decision for one month.**

Amend Section 9.23.1C(6):

Required Votes

a. Board of Adjustment: If a motion to reverse or modify is not made, or fails to receive the affirmative vote of five members necessary for adoption, then the appeal shall be denied.

b. Land Use Control Board: If a motion to reverse or modify is not made, or fails to receive the affirmative vote of a majority of those members present, then the appeal shall be denied.

Amend Section 9.23.2E(2):

Appeals heard by the governing bodies shall be based on the record, **as well as on any new evidence presented during the hearing.**

Amend Section 12.3.1:

BANK: An establishment authorized by the state and/or federal government to accept deposits, pay interest, clear checks, make loans, act as an intermediary in financial transactions and provide other financial services to its customers. For the purpose of this Code, a bank shall not include a standalone ATM or a payday loan, title loan or flexible loan plan establishment.

CLEARING, GRADING: Clearing and grading requiring the issuance of a Special Use Permit shall meet the definition of Earth Extraction in this Section.

DAY REPORTING SERVICE ESTABLISHMENT: See work release center.

EARTH EXTRACTION: Earth extraction requiring the issuance of a Special Use Permit shall be limited to dirt removal from a site where the area of dirt removed exceeds three acres in area or 4840 cubic yards in volume, whichever is less. The following examples of earth extraction are exempt from the requirement to obtain a Special Use Permit:

1. **Earth extraction incidental to a plan approved in accordance with this Code.**
2. **Earth extraction incidental to the construction of a single-family dwelling.**
3. **Earth extraction incidental to a project funded by the city, county, state or federal government.**
4. **Earth extraction incidental to a duly permitted lake or pond.**
5. **Earth extraction incidental to the grading, tilling or leveling of land for a permitted agricultural use.**

EQUESTRIAN CENTER: Any facility that contains infrastructure for the boarding, training and/or competition of horses.

EQUESTRIAN CENTER WITH OUTDOOR LIGHTING: Any equestrian center that contains outdoor lighting designed to light a large area for nighttime competition and/or training. For the purpose of this definition, a large area shall be defined as any area that is similar in size, or greater in size, to a soccer field, football field or baseball diamond.

FARMERS MARKET: A market for the purpose of selling predominately fresh fruits and vegetables, (a minimum 50% of the display area must be devoted to fresh fruit and vegetables). A Farmers Market is subject to Use Standards (2.6.3Q). If those standards cannot be met, then this shall require the filing of an application for a Special **Use** Permit.

KENNEL: Any lot or premises on which five (5) or more dogs are either permanently or temporarily boarded.

MINING: Any extraction of a mineral from the ground.

MULTI-MODAL FACILITY: Any bus, train or similar passenger terminal that offers multiple modes of transportation, including access to two or more of the following: bus, train, bike, automobile or other.

NEIGHBORHOOD RESOURCE CENTER: Any establishment that provides certain services to the community, a particular neighborhood or a specific segment of the community. Such services include, but are not limited to: special counseling, education or workforce training or instruction, parent education classes, child development activities, parent-to-parent support groups, afterschool and academic enrichment and health information and referrals.

RESOURCE EXTRACTION: Any extraction from the earth, including dirt, minerals and other materials.

RIDING ACADEMY: A type of Equestrian Center.

RIDING ACADEMY WITH OUTDOOR LIGHTING: A type of Equestrian Center with Outdoor Lighting.

VAPOR SHOP: Any retail establishment where more than 50% of its monthly sales are comprised of the selling of electronic cigarettes, a

device containing nicotine-based liquid that is vaporized and inhaled.

WORK RELEASE CENTER: Any establishment that specializes in providing employment or housing services to individuals in prison or transitioning from prison that further involves the individuals who are being served to physically report to the establishment.

Amend Section 12.3.4:

BANNER: A sign made from cloth, vinyl or other similar pliable material that is hung from a frame or affixed to a wall.

FEATHER SIGN: Any banner, with or without words, that is designed to flutter in an effort to attract customers to a commercial establishment.

FRONTAGE: For purposes of the Sign Ordinance (Chapter 4.9 of this Code), the distance a site abuts a public road, or if the property only abuts a private drive, the distance a site abuts a private drive. Private drive stubs shall not be used in the calculation of frontage for the purposes of the Sign Ordinance.

SECTION 2. That the various sections, words, and clauses of this Joint Ordinance are severable, and any part declared or found unlawful may be elided without affecting the lawfulness or the remaining portions.

SECTION 3. That this Joint Ordinance shall take effect from and after the date it shall have been enacted according to due process of law, and thereafter shall be treated as in full force and effect in the jurisdictions subject to the above-mentioned Ordinance by virtue of the concurring and separate passage thereof by the Shelby County Board of Commissioners and the Council of the City of Memphis.

BE IT FURTHER ORDAINED, That the various sections of this Ordinance are severable, and that any portion declared unlawful shall not affect the remaining portions.

BE IT FURTHER ORDAINED, That this Ordinance shall become effective _____, 2016.

MARK H. LUTTRELL, JR., County Mayor

Date: _____

ATTEST:

Minutes Clerk of the County Commission

ADOPTED: _____